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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,249	10/15/2001	Giorgio Attardo	PHARMA-123	9696
24999	7590	08/12/2004	EXAMINER	
MILLEN, WHITE, ZELANO & BRANIGAN, PC 2200 CLARENDON BLVD SUITE 1400 ARLINGTON, VA 22201			MELLER, MICHAEL V	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/976,249

Applicant(s)

ATTARDO ET AL.

Examiner

Michael V. Meller

Art Unit

1654

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 28 June 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: none.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 39 and 49-73.

Claim(s) withdrawn from consideration: 1-38, 40-48.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
Michael V. Meller  
Primary Examiner  
Art Unit: 1654

Continuation of 2. NOTE: the amendments filed raise new issues. These amendments were not filed before final and they raise new matter issues for not having support in the specification.

Continuation of 5. does NOT place the application in condition for allowance because: of the reasons of record. Applicant argues that the references do not anticipate their invention but this simply is not true. Applicants state that the finality of the office action should be removed. The action was properly made final. The compounds are clearly in the pieces of prior art. For applicant to find the compounds would not have been an undue burden on applicants, its not like applicant's had to scour through columns of words to find one or two words the compounds are pretty easily found. In Cimpola et al. example 16 clearly shows the core structure, in Chu et al., at the top of col. 5 and the claims the structure is shown which reads on the core structure. In Belleau et al. '315, under "Summary of the Invention" the core structure is shown. Belleau et al. '753, example 27 clearly shows the core structure. Thus, it would have been easy for applicant to identify the claimed structure if applicant simply spent a little time to scan for the compound. The restriction and election of invention have been made clear on the record. Applicants were restricted to such a core structure simply because the structure being claimed is still so large and reads on many different compounds both structurally and functionally. Applicants have now amended the claims to include even more structures some of which have no support. .